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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 HANY VELETANLIC,

14 Defendant.

CASE NO. CR18-0162JLR

ORDER DENYING
DEFENDANT’S MOTION FOR
COMPASSIONATE RELEASE

15 **I. INTRODUCTION**

16 Before the court is Defendant Hany Veletanlic’s second motion for compassionate
17 release pursuant to 18 U.S.C. § 3582(c)(1). (Mot. (Dkt. # 237); Reply (Dkt. # 246).)
18 Plaintiff the United States of America (“the Government”) opposes Mr. Veletanlic’s
19 motion. (Resp. (Dkt. # 242).) The court has considered Mr. Veletanlic’s motion, the
20 parties’ submissions in support of and in opposition to the motion, the relevant portions
21 of the record, and the applicable law. Being fully advised, the court DENIES Mr.
22 Veletanlic’s motion.

II. BACKGROUND

Mr. Veletanlic is a 37-year-old inmate who is currently detained at Federal Correctional Institution (“FCI”)-Big Springs.¹ (*See* Mot. at 5; Ex. A to Resp. (Dkt. # 244) (sealed) (“Chronic Illness Management”) at 1.) He is in prison for illegally exporting firearms and parts overseas, possessing illegal silencers, and possessing a loaded gun with an obliterated serial number. (*See generally* Indictment (Dkt. # 30); Resp. at 2-3.) A jury found Mr. Veletanlic guilty of one count of violation of the Arms Export Control Act (“AECA”), two counts of possession of an unregistered firearm, and one count of possession of a firearm with an obliterated serial number. (*See* Verdict Form (Dkt. # 129) (sealed).) On January 27, 2020, the court sentenced him to 85 months of imprisonment and three years of supervised release. (*See* 1/27/20 Minute Entry (Dkt. # 195); Judgment (Dkt. # 196).) Mr. Veletanlic was remanded into custody following his sentencing hearing, and his projected release date is March 5, 2025. (*See* 1/27/20 Min. Entry; Resp. to First Mot. for Comp. Release (Dkt. # 216) at 5.)

Mr. Veletanlic first moved for compassionate release on December 28, 2020, on the basis that the COVID-19 pandemic’s effect on his conditions of confinement at FCI-Big Spring, in combination with his underlying health conditions, including hypertension, high blood pressure, and AV-block,² represented “extraordinary and

¹ Mr. Veletanlic is expected to be moved to a new institution soon because FCI-Big Springs is scheduled to close this month. (*See* Resp. at 4; Mot. at 5.)

² Mr. Veletanlic’s first motion for compassionate release alleged that he suffered from AV-block, which he described as “a heart condition related to lead poisoning.” (*See* First Mot. for Comp. Release (Dkt. # 209) at 3.)

1 compelling” reasons to reduce his sentence to time served. (*See* First Mot. for Comp.
2 Release at 2-3, 6.) The court, however, lacked jurisdiction to entertain Mr. Veletanlic’s
3 motion because his case was pending on appeal to the Ninth Circuit. (*See* 2/17/21
4 Indicative Order (Dkt. # 224).) As a result, the court issued an indicative ruling denying
5 his motion after concluding that he failed to demonstrate “extraordinary and compelling
6 reasons” for release. (*See id.* at 1-2 (noting that the court considered Mr. Veletanlic’s
7 age, medical conditions, the COVID-19 situation at his facility, and the 18 U.S.C.
8 § 3553(a) factors, among other things).)

9 Mr. Veletanlic appealed the ruling to the Ninth Circuit, arguing that the court erred
10 in failing to separately analyze whether he presented extraordinary and compelling
11 reasons for his release as opposed to whether the section 3553(a) factors favored release.
12 (*See* NOA (Dkt. # 225); *see also* 2/17/21 Indicative Order at 1-2.) The Government
13 moved for summary affirmance, which the Ninth Circuit granted. (*See* 9/15/21 9th Cir.
14 Order (Dkt. # 235) (concluding that, because the district court denied the motion for
15 compassionate release, it did not err by merging its consideration of “extraordinary and
16 compelling reasons” with the 18 U.S.C. § 3553(a) factors).)

17 III. ANALYSIS

18 Mr. Veletanlic again seeks compassionate release, arguing that the
19 “unconscionable” conditions of confinement at FCI-Big Springs and changes in the law,
20 namely the Ninth Circuit’s holding in *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir.
21 2021) and the “decriminalization” of the conduct that gave rise to his conviction under
22 the AECA, support a different result this time. (*See generally* Mot.; Reply.) The court

1 begins by setting forth the standard of review before turning to its analysis of Mr.
2 Veletanlic's motion.

3 **A. Standard for Compassionate Release**

4 A court generally may not correct or modify a prison sentence once it has been
5 imposed, unless permitted by statute or by Federal Rule of Criminal Procedure 35.
6 *United States v. Penna*, 315 F.3d 509, 511 (9th Cir. 2003); *see also Dillon v. United*
7 *States*, 506 U.S. 817, 824-25 (2010). One such statute is 18 U.S.C. § 3582(c)(1), which
8 governs motions for compassionate release. *See United States v. Fuller*, No.
9 CR17-0324JLR, 2020 WL 1847751, at *2 (W.D. Wash. Apr. 13, 2020). 18 U.S.C.
10 § 3582(c)(1), as amended by the First Step Act of 2018, provides the court with authority
11 to reduce a sentence upon the motion of an inmate if three conditions are met: (1) the
12 inmate has either exhausted their administrative appeal rights of the Bureau of Prisons'
13 ("BOP") failure to bring such a motion on the inmate's behalf or has waited until 30 days
14 after the applicable warden has received such a request; (2) the inmate has established
15 "extraordinary and compelling reasons" for the requested sentence reduction; and (3) the
16 reduction is consistent with "applicable policy statements" issued by the United States
17 Sentencing Commission. *See* 18 U.S.C. § 3582(c)(1)(A)(i); *see also Riley v. United*
18 *States*, No. C19-1522JLR, 2020 WL 1819838, at *5 (W.D. Wash. Apr. 10, 2020). It also
19 instructs the court to consider the sentencing factors set forth in 18 U.S.C. § 3553(a)
20 when deciding whether compassionate release is appropriate. 18 U.S.C. § 3582(c)(1)(A).

21 In its indicative order denying Mr. Veletanlic's first motion for compassionate
22 release, the court applied United States Sentencing Guidelines ("U.S.S.G.") § 1B1.13,

1 which provides, in relevant part, that a defendant may be eligible for compassionate
2 release if “extraordinary and compelling reasons warrant the reduction”; the “defendant is
3 not a danger to the safety of any other person or to the community”; and the “reduction is
4 consistent with this policy statement.” U.S.S.G. § 1B1.13; *id.* cmt. n.1 (outlining four
5 categories of circumstances that may constitute “extraordinary and compelling reasons”
6 for a sentence reduction); (*see* 2/17/21 Indicative Order).

7 After the court issued its indicative order, the Ninth Circuit held that U.S.S.G.
8 § 1B1.13 “is not an ‘applicable policy statement’ for 18 U.S.C. § 3582(c)(1)(A) motions
9 filed by a defendant.” *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021).
10 Therefore, it is now clear that the “Sentencing Commission’s statements in U.S.S.G.
11 § 1B1.13 may inform a district court’s discretion for § 3582(c)(1)(A) motions filed by a
12 defendant, but they are not binding.” *Id.* Thus, the court agrees with Mr. Veletanlic that
13 it is not bound by U.S.S.G. § 1B1.13 in evaluating his motion for compassionate release.

14 **B. Exhaustion of Administrative Remedies**

15 Before considering the merits of Mr. Veletanlic’s motion, the court must
16 determine whether he has met the statutory exhaustion requirement for compassionate
17 release. *See* 18 U.S.C. § 3582(c)(1)(A). Mr. Veletanlic made a request for
18 compassionate release to the warden at FCI-Big Springs on May 27, 2021, which was
19 denied on May 28, 2021. (*See* Mot. at 6, Ex. 2.) Mr. Veletanlic then filed this motion in
20 October 2021—more than 30 days after he submitted his request to the warden. (*See*
21 *generally* Mot.) The court finds the statutorily required 30-day period has expired, and
22 Mr. Veletanlic’s motion is properly before the court.

C. Extraordinary and Compelling Circumstances

The court must next determine whether “extraordinary and compelling” circumstances warrant a reduction of Mr. Veletanlic’s term of imprisonment. *See* 18 U.S.C. § 3582(c)(1)(A)(i). Mr. Veletanlic bears the burden of establishing that “extraordinary and compelling reasons” exist that justify compassionate release. *See United States v. Suryan*, No. CR19-0082RAJ, 2021 WL 3510423, at *2 (W.D. Wash. Aug. 10, 2021). Mr. Veletanlic argues that he is entitled to compassionate release for the following primary reasons: (1) the most serious offense that Mr. Veletanlic was convicted of, which “substantially increased the Sentencing Guideline Range,” “was decriminalized”; and (2) the conditions of confinement at FCI-Big Springs have been “unduly harsh.” (*See* Mot. at 2-5, 7-8; Reply at 1-3.) The court addresses each of these rationales in turn.

1. Mr. Veletanlic’s Sentence

Mr. Veletanlic argues that extraordinary and compelling circumstances exist because his “crime of conviction” under the AECA, which “adversely affected the length of [his] sentence[,] no longer exists.” (*See* Reply at 1-2; Mot. at 3, 7.) In support of this argument, he references the State and Commerce Departments’ new regulations that “transferred certain firearms, ammunition, components, and accessories from controls under the International Traffic in Arms Regulations (ITAR) to the Export Administration Regulations (EAR).” (*See* Mot. at 3 (citing Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III, 85 Fed. Reg. 3819 (Jan. 23, 2020) (to be codified at 22 C.F.R. pts. 121, 123-24, 126, 129)).) The new

1 regulations, he alleges, removed the types of munitions that he was charged with
2 exporting from the U.S. Munitions List (“USML”), and as a result, his conduct is no
3 longer a crime under the AECA. (*See id.* at 3, 7.) Mr. Veletanlic claims that his sentence
4 would have been lower if he was charged and convicted under the new regulations,
5 thereby justifying compassionate release. (*See id.* at 7 (noting that his Sentencing
6 Guideline Range “would have been 51-63 months,” with a base offense level of 24, had
7 he not been charged and convicted of violating the AECA (citing Presentence Report
8 (Dkt. # 153) (sealed))).)

9 The court, however, does not agree that this change in the law is an “extraordinary
10 and compelling” circumstance justifying Mr. Veletanlic’s release. As Mr. Veletanlic
11 notes, some courts have held that “where an ‘enormous sentencing disparity’ is created
12 by . . . ‘changes to federal sentencing law’ . . . , that disparity ‘constitutes an
13 extraordinary and compelling reason’” for compassionate release. *See United States v.*
14 *Jones*, 482 F. Supp. 3d 969, 979–80 (N.D. Cal. 2020) (quoting *United States v. Quinn*,
15 467 F. Supp. 3d 824, 829-30 (N.D. Cal. 2020); (*see also* Reply at 2). But there has been
16 no change in federal sentencing law here, and Mr. Veletanlic’s sentence was well within
17 the applicable sentencing guideline range. (*See* Presentence Report at 14 (noting that the
18 applicable guideline range was 78-97 months); Judgment at 2 (sentencing him to 85
19 months).) Nevertheless, Mr. Veletanlic asserts that the court should apply the rule
20 regarding disparities created by changes to federal sentencing law “when the crime of
21 conviction which adversely affected the length of the sentence no longer exists.” (*See*
22 Reply at 2.) The court declines to do so.

1 Although Mr. Veletanlic's conduct is no longer criminal under the AECA, it
2 remains criminal under the Export Reform Control Act ("ERCA"). 50 U.S.C. § 4819
3 (providing that a willful violation of the ERCA or any regulation or license thereunder
4 subjects a person to a fine of \$1,000,000 and imprisonment for up to 20 years);
5 Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions
6 List Categories I, II, and III, 85 Fed. Reg. 3819 (Jan. 23, 2020) (to be codified at 22
7 C.F.R. pts. 121, 123-24, 126, 129) (moving certain munitions, including those Mr.
8 Veletanlic exported, from the USML to the Commerce Control List ("CCL"), which is
9 governed by the ERCA and its implementing regulations); Control of Firearms, Guns,
10 Ammunition and Related Articles the President Determines No Longer Warrant Control
11 Under the United States Munitions List (USML) 85 Fed. Reg. 4136 (Jan. 23, 2020) (to be
12 codified at 15 C.F.R. pts. 732, 734, 736, 740, 742-44, 746, 748, 758, 762, 772, 774)
13 (noting that the "final rule does not deregulate the transferred items" and individuals will
14 still have to obtain a license "to export or reexport to any country a firearm or other
15 weapon that is being moved from the USML to the CCL by this final rule"); 15 C.F.R.
16 § 774, Suppl. 1 (listing the types of firearms, receivers, and other munitions currently on
17 the CCL). The maximum sentence for exporting munitions controlled by the ERCA is
18 the same as the maximum sentence that Mr. Veletanlic faced under the AECA. *See* 50
19 U.S.C. § 4819 (providing for a maximum sentence of 20 years); 22 U.S.C. § 2278 (same).
20 Moreover, Mr. Veletanlic has not directed the court to any case in which a court granted
21 compassionate release after a change to the USML.

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1 Therefore, the court finds that the change in the USML that removed the
2 munitions Mr. Veletanlic exported from the AECA is neither an extraordinary nor
3 compelling reason to grant his motion for compassionate release.

4 2. Mr. Veletanlic's Conditions of Confinement at FCI-Big Springs

5 Mr. Veletanlic argues that extraordinary and compelling circumstances exist
6 because the conditions that he has experienced at FCI-Big Springs due to the pandemic
7 "have been unconscionable." (*See* Mot. at 7-8.) He alleges that he contracted COVID-19
8 and continues to be at risk of "death or serious illness" as a result of the pandemic and the
9 FCI-Big Springs staffs' failure to follow pandemic protocols or provide adequate
10 conditions of confinement. (*See id.*) Mr. Veletanlic claims that "[i]f the [c]ourt had been
11 aware of the extreme conditions [he] would have had to endure while incarcerated, it is
12 reasonable to assume that the [c]ourt would have considered that in determining the
13 length of the sentence." (*Id.* at 8; Reply at 2.)

14 The court need not reiterate the widely known information regarding the
15 symptoms of COVID-19, the devastating global impact of the virus, and the
16 unprecedented challenges COVID-19 created for federal prisons. *See United States v.*
17 *Rollness*, No. CR06-0041RSL, 2021 WL 4476920, at *4 (W.D. Wash. Sept. 30, 2021)
18 (discussing COVID-19's impact on prisons). Moreover, the court does not discount the
19 dangers associated with COVID-19 nor the difficulties prisons face in preventing and
20 containing outbreaks. However, "extraordinary and compelling" circumstances are not
21 established by "the mere elevated risk of contracting a pandemic virus in prison, even if
22 such a higher risk exists." *Riley*, 2020 WL 1819838, at *7.

Mr. Veletanlic’s argument that the conditions at FCI-Big Springs warrant release, including the number of COVID-19 infections and deaths, the lax implementation and enforcement of COVID-19 prevention policies, the impossibility of maintaining social distancing, and the unhygienic living situations, is unavailing. (*See* Mot. at 3-5, 7-8); *see also United States v. Waxman*, No. CR18-0175RSL, 2021 WL 4148180, at *6 (W.D. Wash. Sept. 13, 2021) (rejecting similar arguments); *United States v. Powers*, No. CR15-0166TSZ, 2020 WL 3605748, at *2 (W.D. Wash. July 2, 2020) (declining to find extraordinary and compelling circumstances based on “external factors inherent in confinement or the facility or arising from BOP’s procedures”). “[G]eneral conditions that affect inmates indiscriminately throughout the prison are insufficient to support an individual defendant’s claim for compassionate release.” *United States v. Bolden*, No. CR16-0320RSM, 2020 WL 4286820, at *7 (W.D. Wash. July 27, 2020); *United States v. Butov*, No. CR16-0226RSM, 2020 WL 5910063, at *5 (W.D. Wash. Oct. 6, 2020) (stating that courts have “consistently rejected . . . generalized arguments as a basis for compassionate release,” such as challenges to BOP medical staffing, relaxed precautions, and lack of adequate testing). Courts have also rejected generalized claims “that [a defendant’s] period of incarceration, served during the time of Bureau of Prisons’ COVID-19 restrictions, has presented harsher punishment and made this past year more difficult.” *See Suryan*, 2021 WL 3510423, at *3 (rejecting a similar argument).

Also relevant to the court’s analysis here is the fact that Mr. Veletanlic will soon be transferred from FCI-Big Springs to a new prison, thus essentially mooted his concerns regarding the conditions at FCI-Big Springs. (*See* Resp. at 4; Mot. at 5); *see*

1 *also United States v. Garcia*, No. CR18-0174RAJ, 2021 WL 2313438, at *4 (W.D.
 2 Wash. June 7, 2021) (stating that the defendant’s concerns regarding his conditions of
 3 confinement were moot because he had since moved prisons). While Mr. Veletanlic’s
 4 conditions of confinement at FCI-Big Springs have been more challenging than the court
 5 could have predicted, the court finds that they do not constitute “extraordinary and
 6 compelling” circumstances warranting Mr. Veletanlic’s release.³ *See Suryan*, 2021 WL
 7 3510423, at *3.

8 The court further finds that, even when Mr. Veletanlic’s arguments are considered
 9 together, he has not established “extraordinary and compelling” reasons justifying
 10 compassionate release.⁴ Accordingly, the court DENIES Mr. Veletanlic’s motion for
 11 compassionate release.

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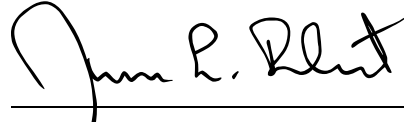
13
 14 ³ Mr. Veletanlic does not attempt to demonstrate that he suffers from a specific medical
 15 condition that places him at risk for COVID-19; instead, he makes only a vague reference to his
 16 continued “risk of death or serious illness” in light of the conditions at FCI-Big Springs. (*See*
 17 *Mot. at 7-8.*) Even if he had, the court finds that his low risk of reinfection given his past
 18 infection and his rejection of the vaccine weigh against compassionate release. (*See Mot. at 7*;
 19 *Ex. C to Resp. (Dkt. # 244) (sealed) (“Vaccine Consent”) at 1*); *see also United States v.*
 20 *Seleznev*, No. CR11-0070RAJ, 2021 WL 4804614, at *3 (W.D. Wash. Oct. 14, 2021) (citing
Having SARS-CoV-2 Once Confers Much Greater Immunity Than a Vaccine—But Vaccination
Remains Vital, *Science* (Aug. 26, 2021), [https://www.science.org/content/article/having-sars-](https://www.science.org/content/article/having-sars-cov-2-once-confers-much-greater-immunity-vaccine-vaccination-remains-vital)
cov-2-once-confers-much-greater-immunity-vaccine-vaccination-remains-vital); *United States v.*
Baeza-Vargas, No. CR-10-00448-010-PHX-JAT, 2021 WL 1250349, at *2-3 (D. Ariz. Apr. 5,
 2021) (“Judges of this Court, as well as others around the country, have ruled with consistency
 that an inmate’s denial of a COVID-19 vaccination weighs against a finding of extraordinary and
 compelling circumstances.”).

21 ⁴ Having determined that Mr. Veletanlic has not made the requisite showing of
 22 extraordinary and compelling reasons warranting compassionate release, the court need not
 analyze whether a reduction in Mr. Veletanlic’s sentence would be consistent with the factors set
 forth in 18 U.S.C. § 3553(a).

IV. CONCLUSION

For the foregoing reasons, the court DENIES Mr. Veletanlic's motion for compassionate release (Dkt. # 237).

Dated this 9th day of November, 2021.

A handwritten signature in black ink, appearing to read "James L. Robart", written over a horizontal line.

JAMES L. ROBART
United States District Judge